

**Save the Children's key messages for the
First Informal thematic session on the human rights of all migrants
Global Compact for Safe, Orderly and Regular Migration
8-9th May 2017**

Background: Turning States international obligations and commitments into tangible action for children on the move

The UN Convention on the Rights of the Child (UNCRC) enjoys near universal ratification and creates legal obligations for UN Member States to protect, respect and fulfil the rights of all children within their jurisdiction. Irrespective of their legal status, all children in the context of migration are children first and foremost, entitled to all rights enshrined in the UNCRC. State actions regarding these children should be guided systematically by the general principles of the Convention, namely non-discrimination, the best interests of the child, the right to life, survival and development and the right of the child to express his or her views.

On 19th September 2016, during the High-Level Summit on “addressing large movements of refugees and migrants”, UN Member States made a number of historic commitments in the New York Declaration to refugee and migrant children, including:

- to protect the human rights and fundamental freedoms of all refugee and migrant children regardless of their status; (para. 32)
- to comply with obligations under the Convention on the Rights of the Child and to give primary consideration at all times to the best interests of the child; (para. 32)
- to address the special needs of all people in vulnerable situations, including children, especially those who are unaccompanied or separated from their families; (para. 33)
- to provide for basic health, education and psychosocial development and for the registration of all births on our territories (para.32)
- to ensure that all children are receiving education within a few months of arrival, and prioritize budgetary provision to facilitate this, including support for host countries as required (para. 32)
- to affirm that children should never be criminalized or subject to punitive measures because of their or their parents' migration status; (para. 56)
- and to work to end the practice of child immigration detention; (para. 33)

Building upon the New York Declaration, the Global Compact for Safe, Orderly and Regular migration should reaffirm these commitments but move beyond a repetition of human rights principles to a discussion of how these principles are to be upheld and operationalised for all children on the move. Save the Children, Terre des Hommes, together with a broad coalition of organisations, including UN agencies and NGOs, have come together to promote child rights in the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration and to develop harmonized child

focused goals, targets and indicators¹. We call on UN Member states and other stakeholders to champion the rights of children on the move throughout migration policy discussions and ensure their operationalisation into the Global Compacts.

In this thematic brief Save the Children highlights key issues that the Global Compact for Safe, Orderly and Regular Migration should take into account with clear benchmarks to translate these commitments into tangible action for all children in the context of migration.

1. Closing the protection gap for migrants in vulnerable situations, with a particular focus on children on the move

Around the world, many millions of migrants are in precarious situations of vulnerability to human rights abuses including torture, ill-treatment, denial of access to economic, social and cultural rights, arbitrary arrest and detention, and refoulement. While some migrants will fall outside the specific legal protections afforded to refugee status, human rights law still applies to all human beings, including migrants in large and/or mixed movements.

In the context of unsafe migration flows, children are in a situation of double vulnerability - as children and as children affected by migration. Around the world, nearly 50 million children have migrated across borders or been forcibly displaced² – and this is a far from capturing the total numbers.

These children often undertake perilous journeys during which they are met with xenophobia, violence and—increasingly—the threat of immigration detention. Many children do not even reach safety, die on the migration route and are not even reflected in the statistics.

Proactive measures are needed to respond to the specific needs of these children, through proper individual assessments and tailored responses, to ensure a continuum of care, support and protection for migrant children at each step of their journey. Particular attention should be paid to the situation of specific groups of children, who face multiple and intersecting forms of discrimination or risks to their safety, including migrant girls, children with disabilities or unaccompanied and separated children, who are exposed to a higher risk of sexual and physical abuse, debt bondage or forced into child labour or prostitution.

The Principles and Guidelines on the human rights protection of migrants in vulnerable situations being developed by the Global Migration Group³ should serve as the basis for this thematic session and other consultations on the Global compact for Safe, Orderly and Regular Migration. This set of principles, guidelines, and practical guidance can assist States in translating human rights principles into practical measures to protect migrants. The Global Compact itself could also be an opportunity to endorse and adopt the Principles and Guidelines as part of the commitment to provide guidance on the protection and assistance to migrants in vulnerable situations.

¹ For more information on the Initiative for Child Rights in in the Global Compacts, visit this website: <http://www.childrenonthemove.org/>

² UNICEF (September 2016), Uprooted: The growing crisis for refugee and migrant children

³ <http://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>

2. Specific protection challenges that require priority attention and action

Best interest of the child absent from decisions related to migrant children

Migration laws, policies and practices often lack a child rights perspective, including a proper consideration and application of the “best interest of the child” principle and immigration control takes priority over child rights obligations.

Considerations on the best interests of the child are too often absent from decision-making affecting children on the move, despite the requirements of the UNCRC. This includes the review of migration and international protection applications, as well as decisions relating to migration control policies such as arrest, detention, return and restrictions on access to basic services.

Even in decisions regarding family unity, the best interests of the child are not systematically assessed, if at all. Save the Children’s programmes show that too often the procedures for determining children’s identity, assessing their age, establishing the nature of relationship between a separated child and an accompanying adult, and identifying children’s specific needs, as well to identify a guardian, or temporary care solutions for unaccompanied children are not based on the best interests principle or on child friendly approaches. Too often authorities lack the necessary awareness of child rights and ability to act in a child sensitive way. Children’s views and their full participation need to be a key element of responses for the protection and support of children involved in mixed migration flows.

Importantly, mechanisms for the formal assessment or determination of the best interests of the child are rarely in place to make appropriate decisions about short, medium and long term solutions for the protection of children on the move.

The best interests of the child should be the primary consideration in procedures on identification, age assessment, reception, identification of long term solutions, including in considerations on return, family reunification and alternative care solutions. Additionally, best interests assessments and formal determination procedures should be conducted at all stages or decisions of any migration processes affecting children. Dedicated resources and appropriate training of relevant authorities on child rights and child sensitive approaches should be made available.

Criminalisation and child immigration detention

The increased criminalisation of irregular migrants lead children and families to move and live in the shadow⁴, and to rely on smuggling networks and informal avenues to continue their journey or simply to survive. This invisibility further exacerbates their vulnerability.

Every day, all around the world, millions of children are affected by immigration detention. Whether detained themselves or impacted by the detention of their parents or guardians, children are particularly vulnerable to abuse and neglect. In practice, States often detain child refugees, asylum-seekers, and irregular migrants for a number of reasons, which should not justify the practice, such as to conduct routine health, security and identity screening, to maintain family unity, or to facilitate engagement with ongoing asylum or migration procedures.

⁴ For example, see Save the Children (march 2017) joint policy brief with 11 NGOs “Out of sight, exploited and alone” <https://www.savethechildren.net/sites/default/files/Out%20of%20Sight.pdf>

Children must never be detained for migration-related reasons, irrespective of their legal/migratory status or that of their parents. Detention is never in their best interests in this context⁵, and detention has very detrimental impact on children's health and well-being; the longer the time of detention the longer-term its impact is on children's wellbeing.

Prohibiting immigration detention requires governments to develop alternatives to detention, in line with children's best interests, in law and in practice, for all children, including children with their families. The steps for developing such alternatives have been outlined by the International Detention Coalition in the Community Assessment and Placement (CAP) model. This model outlines five steps to prevent and reduce the likelihood of unnecessary detention⁶.

Lack of child protection systems responsive to the specific needs of migrant children

International and national child focussed laws and policies do not take into due consideration children involved in migration. This includes social protection and social welfare policies and programmes, which often ignore the specific needs of migrant children and/or discriminate against them because of their irregular migration status.

When children are on the move, especially when there are no systems for their protection and support, they are particularly vulnerable to separation, violence, abuse, exploitation and discrimination.

National Child Protection Systems should be accessible and responsive to the *specific* needs of boys and girls of different ages and ability who are on the move, regardless of their nationality or migration or documentation status and whether they are accompanied or not. Specific protection and support should be in place for unaccompanied and separated children, focused on the identification of durable solutions.

National protection systems should include:

- Appropriate reception and identification of children, particularly of those with specific needs or who have been victims of abuse, assistance and referral of children on the move;
- A functional and effective guardianship system with qualified and trained independent legal guardians who have the know-how, expertise and capacity to support each child they are appointed to.
- Child friendly and child sensitive asylum and migration systems and appropriate training of relevant authorities on child rights and child sensitive approaches.
- Appropriate procedures to implement long term solutions. This includes procedures to determine the best interests of the child in order to achieve durable solutions for boys and girls who are unaccompanied or separated.

It is therefore vital that support and protection services for migrant children are available throughout the migratory route through transnational cooperation between countries of origin, transit and

⁵ CRC, Report of the 2012 Day of General Discussion, *The Rights of All Children in the Context of International Migration*, 2012, accessed at

<http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/DGD2012ReportAndRecommendations.pdf>

⁶ Robyn Sampson, Vivienne Chew, Grant Mitchell, and Lucy Bowring, *There are Alternatives: A handbook for preventing unnecessary immigration detention* (revised edition), IDC 2015, available [here](#) or at <http://idcoalition.org/publication/there-are-alternatives-revised-edition/>. The five steps are: (1) presume detention is not necessary; (2) screen and assess the individual case; (3) assess the community setting; (4) apply conditions in the community if necessary; (5) detain only as a last resort in exceptional cases.

destination to ensure the safety, security and protection of the rights of children and families in case of threats or violations of their rights while on the move.

Good practice example: the new comprehensive protection law for unaccompanied children in Italy

In March 2017, the Italian Parliament passed the ‘Zampa’, a new protection law providing measures which enhance supports and protections for unaccompanied migrant children in the country. This new law achieves an harmonization, within a single Act, of national provisions on children’s protection and on immigration and is meant to give full implementation to the fundamental principles of the UN Convention on the Rights of the Child. Along with an ‘absolute prohibition on refoulement’, it incorporates the establishment of a structured national reception system, with minimum standards in all reception facilities. Its provisions are designed to regulate all aspects of the life of unaccompanied migrant children in Italy, including attention to the best interests of the child, age determination, reception, foster care, guardianship, access to health and education, the right to be heard in administrative and judicial proceedings, even in the absence of a guardian; and the right to legal assistance.

Lack of access to basic services, with a particular focus on quality education

Many children on the move are deprived of their core right to access quality education, as provided for in Article 28 of the CRC. The ability of all migrant children to access education is uneven, and, although education facilitates integration into host society, not all states explicitly recognize the right of undocumented children to basic education.

The 2030 Agenda’s ambitious plan of action includes a firm commitment from all States to “leave no one behind” by ensuring that those furthest behind will be reached first. Equity is at the heart of SDGs 4’s call on States to “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”. Moreover, it is central to the target 4.1 call that “by 2030, all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes”. To achieve this goal and target, key discriminatory and financial barriers in law and practice that stop children from going to school and learning must be removed.

Quality education plays a critical protective and transformative role for children, young people on the move and their communities and should be provided as quickly as possible, within a few months of their arrival.

3. Recommendations to UN Member States:

Save the Children call on all UN Member States to take the following actionable commitments:

a. Best interest of the child

- Ensure that all protocols, policies and procedures which concern the migration of children, contain best interests assessments and determination procedures.

- Ensure that the principle of non-refoulement is strictly upheld for all migrants, including children, and it is interpreted according to the provisions of the customary law, CRC and, and the guidelines set out by the General Comment No 6 (2005), para 26-28.

b. Child protection

- Develop guidelines to ensure timely and effective screening and referrals for migrants in vulnerable situations, regardless of their migration status.
- Establish appropriate and holistic age assessment procedures based on the best interests of the child
- Ensure appropriate standards to reception are adhered to in line with child rights and their best interests as well as family-based alternative care for unaccompanied and separated children are in place.
- Ensure a functional and effective guardianship system for unaccompanied and separated children with qualified and trained independent legal guardians who have the know-how, expertise and capacity to support each child for whose care they are responsible.

c. Child immigration detention

- Review existing national legislation and policies as well as regional agreements and processes to prohibit child detention based upon the immigration status of children or their parents/guardians.
- Develop, fund and implement and monitoring national action plans for the elimination of child immigration detention involving government authorities, civil society, and other relevant actors, including children themselves.
- Develop child-sensitive alternatives to detention for migrant children and their families that fulfil the best interests of the child.

d. Access to services (with a particular focus on quality education)

- Establish 'Firewalls' between immigration enforcement and public services at all levels, particularly in the field of healthcare and education.
- Secure access for migrant children to quality learning within a few months of their arrival.
- Remove policy and practical barriers which prevent migrant children from attending the formal school system, providing flexible registration and documentation requirements to enrol, and improving education quality and relevance for migrant children.